

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hershey Industries, Inc.

File: B-245328

Date: December 17, 1991

Henry Herbst for the protester.
Frederick M. Quattrone, Esq., and Michael Trovarelli, Esq.,
Defense Logistics Agency, for the agency.
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency's failure to solicit offer from protester for supplies in an urgent procurement violated statutory requirement to maximize competition to the extent practicable where agency admits that it should have been aware of protester as possible source.

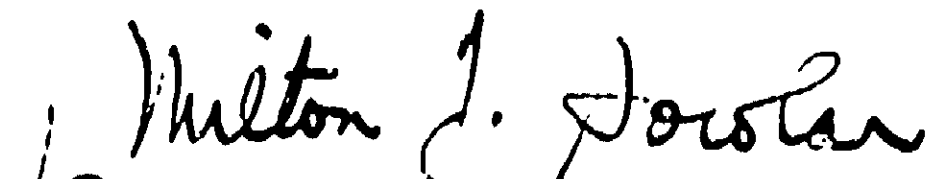
DECISION

Hershey Industries, Inc. protests the award of a contract to Columbia Diagnostics, under request for proposals No. DLA120-91-R-1812, issued by the Defense Logistics Agency (DLA) for biohazard disposable sterilization bags. The protester argues that it was improperly excluded from competing for this contract, and the agency admits that it should have solicited the protester. We sustain the protest.

The contract was awarded to Columbia, without competition, based on the agency's determination pursuant to the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c)(2) (1988), that an unusual and compelling urgency for the supplies existed. DLA states that at the time the contract was awarded, it concluded that Columbia was the only firm able to supply the specified bags. The agency asserts that although Hershey was considered a possible source, the firm was not solicited because the agency erroneously believed that the protester had not previously supplied the tubular or "seamless" type of bag required. The agency acknowledges that Hershey has, in fact, supplied tubular or seamless bags under previous DLA contracts and concludes that it should have solicited Hershey.

We agree with the agency and find that its exclusion of Hershey from consideration for award was contrary to the statutory requirement in 10 U.S.C. § 2304(e) to solicit offers from as many sources as practicable in urgent procurements, and sustain the protest on that basis. Earth Property Servs., Inc., B-237742, Mar. 14, 1990, 90-1 CPD ¶ 273.

The agency has advised our Office that Columbia has completed performance under the contract. Accordingly, we are unable to recommend corrective action in this case. We find, however, that the protester is entitled to recover the costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1991). The protester should submit its claim for such costs directly to the agency.


for Comptroller General
of the United States